

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

FILED BY \_\_\_\_\_ D.C.  
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ROBERT P. DI TROLIO  
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HARVEL LEE WALKER and  
NANCY JEAN WALKER,

Plaintiffs,

VS.

No. 05-1062-T/An

ROGER L. DEPOYSTER, ROBERT T.  
MARVIN, WILLIAM J. ANDERSON,  
and TENNESSEE VALLEY  
AUTHORITY,

Defendants.

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ORDER GRANTING MOTION TO DISMISS DEFENDANT DEPOYSTER

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This action arises out of a motor vehicle accident that occurred on February 18, 2004 in Perry County, Tennessee. The plaintiffs, Harvel Lee Walker and Nancy Jean Walker, filed the action in the Circuit Court of Perry County on February 11, 2005 against Roger L. Depoyster and his employer, the Tennessee Valley Authority "(TVA)", Robert T. Marvin and William J. Anderson. On March 4, 2005, TVA removed the case to this Court. Depoyster filed a motion to dismiss on March 10, 2005. Plaintiffs have not responded to the motion.

A motion to dismiss under Rule 12(b)(6) tests whether a claim has been adequately stated in the complaint. Rule 8(a) requires the pleader to set forth a short and plain statement

of the claim showing an entitlement to relief. In evaluating a motion to dismiss under Rule 12(b)(6), all allegations in the complaint are taken as true and the complaint is construed liberally in favor of the party opposing the motion to dismiss. Westlake v. Lucas, 537 F.2d 857, 858 (6<sup>th</sup> Cir. 1976). A motion to dismiss under Rule 12(b)(6) is appropriate only “if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Allard v. Weitzman (In re Delorean Motor Co.), 991 F.2d 1236, 1240 (6<sup>th</sup> Cir. 1993).

Section nine of the Federal Employees Liability Reform and Tort Compensation Act grants TVA employees immunity from personal liability for common law torts committed within the scope of their employment. 16 U.S.C. § 831c-2; see also Hill v. Tennessee Valley Auth., 842 F. Supp. 1413, 1417 (N.D. Ala. 1993). The statutory mechanism provides that upon a certification by TVA that the employee was acting within the scope of his employment at the time of the incident giving rise to the claim, the claim must be deemed one brought against TVA. § 831c-2(b)(1)-(2). An action against the individual employee is precluded:

(a) Exclusiveness of remedy

(1) An action against the Tennessee Valley Authority for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Tennessee Valley Authority while acting within the scope of this office or employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim. Any other civil action or

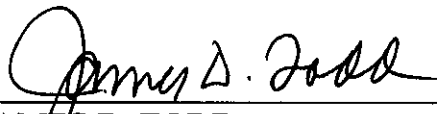

proceeding arising out of or relating to the same subject matter against the employee or his estate is precluded without regard to when the act or omission occurred.

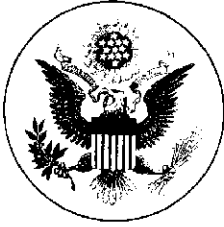
§ 831c-2(a)(1).

In this case, TVA has certified that Depoyster was acting within the scope of his employment at the time of the accident on February 18, 2004. Therefore, the plaintiffs' claims based on Depoyster's alleged negligence, wrongful acts or omissions must be brought against TVA exclusively, and the claims against Depoyster individually must be dismissed.

Accordingly, the motion to dismiss the plaintiffs' claims against defendant Roger L. Depoyster with prejudice is hereby GRANTED.

IT IS SO ORDERED.

  
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JAMES D. TODD  
UNITED STATES DISTRICT JUDGE  
  
\_\_\_\_\_  
DATE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 10 in case 1:05-CV-01062 was distributed by fax, mail, or direct printing on April 28, 2005 to the parties listed.

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Maureen H. Dunn  
TENNESSEE VALLEY AUTHORITY  
400 W. Summit Hill Dr.  
Knoxville, TN 37902--140

William S. Fleming  
FLEMING FLYNN & MURPHY, PC  
P.O. Box 90  
Columbia, TN 38402--009

Bobby A. McGee  
LAW OFFICE OF BOBBY A. MCGEE  
P.O. Box 327  
Linden, TN 37096

Daniel Mark Nolan  
BATSON NOLAN BRICE & WILLIAMSON  
121 S. Third St.  
Clarksville, TN 37040

Thomas A. Robins  
TENNESSEE VALLEY AUTHORITY  
400 W. Summit Hill Dr.  
Knoxville, TN 37902--140

Edwin W. Small  
TENNESSEE VALLEY AUTHORITY  
400 W. Summit Hill Dr.  
Knoxville, TN 37902--140

Honorable James Todd  
US DISTRICT COURT